

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Local 307, National Postal Mailhandlers Union (NPMHU) AFL–CIO, A Division of LIUNA (United States Postal Service) and Xenthrus A. Mainor. Case 07–CB–218938

June 4, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent, Local 307, National Postal Mailhandlers Union (NPMHU), AFL–CIO, a Division of LIUNA, has failed to file an answer to the complaint. Upon a charge and amended charge filed by Xenthrus A. Mainor on April 23 and July 26, 2018,¹ respectively, the General Counsel issued a complaint on November 21 against the Respondent, alleging that it has violated Section 8(b)(1)(A) of the National Labor Relations Act. The Respondent failed to file an answer.

On December 21, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On January 3, 2019, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a timely response to the Notice to Show Cause, and the General Counsel filed a reply to the Respondent’s response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before December 5, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, by letter dated December 11, the Region notified the Respondent that unless it received an answer by December 18, it would file a motion for default judgment. The Respondent,

however, neither filed an answer nor requested an extension of time to do so before the December 18 deadline expired.

In its response to the Notice to Show Cause, the Respondent makes several arguments in support of its contention that it has established good cause for failing to file a timely answer. For the reasons set forth below, we find no merit in these arguments.³

The Respondent’s primary contention is that it was not properly served with the complaint. The record, however, shows that the General Counsel mailed the complaint by certified mail, return receipt requested, to the Respondent’s correct address and suite number. See Section 102.4(a) of the Board’s Rules and Regulations (listing certified mail as an appropriate method of service for filing complaints). Although the Respondent argues that the record does not contain return post office receipt cards as proof of service, such method of proof is not exclusive; any sufficient proof may be relied upon to establish service. *Id.* at Section 102.4(d). Here, the United States Postal Service’s online tracking service shows, based on the tracking number listed on the Board agent’s affidavit of service, that the complaint was successfully delivered to an individual at the Respondent’s address. See *WF Coal Sales Inc.*, 367 NLRB No. 77, slip op. at 1 fn. 1 (2019) (relying on USPS tracking information to prove service); *GTS Ambulance Transportation, LLC*, 367 NLRB No. 82, slip op. at 1 fn. 1 (2019) (same). In addition, the affidavit of service of the Board agent constitutes sufficient proof of service of the complaint, even in the absence of evidence of delivery from the Postal Service. See *CCY New Worktech, Inc.*, 329 NLRB 194, 194 (1999); *Best Western City View Motor Inn*, 327 NLRB 468, 469 and fn. 8 (1999).

The Respondent also claims that it did not actually receive a copy of the complaint until the General Counsel filed its Motion for Default Judgment.⁴ Service of the complaint by certified mail was authorized here, and as discussed above, the complaint was delivered to an individual at the Respondent’s address. Sections 102.3 and 102.4(a) of the Board’s Rules and Regulations; *CCY New Worktech*, 329 NLRB at 194. It is also immaterial that the Region’s December 11 letter did not enclose a copy of the complaint, as the letter complied with the guidance of

¹ All dates are 2018 unless otherwise indicated.

² Chairman Ring is recused and took no part in the consideration of this case.

³ The Respondent asserts that it did not retain counsel until after it received the Board’s Notice to Show Cause. Although the Board has shown some leniency toward pro se respondents, it has consistently held that merely being unrepresented by counsel does not establish a good cause explanation for failing to file a timely answer. *Daviola Productions, LLC d/b/a Imaginarium*, 366 NLRB No. 25, slip op. at 2 (2018)

(“That the [r]espondent previously lacked knowledgeable counsel or, indeed, had no counsel at all, is not a basis for finding good cause for not filing a timely answer.”); *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153–1154 (2003).

⁴ It is well settled that a respondent’s failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003).

Section 10280.3 of the Board's Casehandling Manual. In fact, even if the Region had not issued a reminder letter prior to filing its motion for default judgment, this omission would not excuse the Respondent's antecedent failure to file a timely answer. *Daviola Productions*, 366 NLRB No. 25, slip op. at 2 fn. 2; *St. Regis Enterprises, LLC*, 364 NLRB No. 137, slip op. at 3 fn. 5 (2016) (citing *Bricklayers Local 31*, 309 NLRB 970, 970 (1992)).

Lastly, the Respondent asserts that it has meritorious defenses to the allegations in the complaint. The Board has repeatedly held that a respondent's asserted defenses to the complaint are not properly before it when, as here, the respondent has failed to show good cause for its late response. *Daviola Productions*, 366 NLRB No. 25, slip op. at 2; *Perry Brothers Trucking, Inc.*, 364 NLRB No. 10, slip op. at 3 (2016).

In the absence of good cause being shown for the failure to file an answer to the complaint, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service, the Employer, provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including its facility at 1401 West Fort Street, Detroit, Michigan (Fort Street facility). The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA).

At all material times the Respondent, Local 307, National Postal Mailhandlers Union (NPMHU), AFL-CIO, a Division of LIUNA, has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

At all material times, the following individuals held the positions set forth opposite their names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Glenn Berrien	Local President from 2016 to March 2018
James Haggarty	Local President from March 2018 to Present

The following unit (the unit) constitutes a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All full time-regular and part-time mailhandlers, employed by the Employer at various facilities throughout

the United States; but excluding professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), post inspection service employees, employees in supplemental work force, rural letter carriers, city letter carriers, maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, mail equipment shops employees and material distribution centers employees, managerial employees, and supervisors as defined in the Act.

At all material times, based on Section 9(a) of the Act, the National Postal Mail Handlers Union (NPMHU), AFL-CIO, a division of the Laborers' International Union of North America (the International Union), has been the exclusive collective-bargaining representative of the unit and has been so recognized by the Employer. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 21, 2016, through September 20, 2019.

At all material times, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of the unit, of which the Charging Party is a member.

At all material times, the Respondent has been the servicing agent of the International Union of the unit at the Employer's Fort Street facility, at which the Charging Party currently works.

Since about February 7, 2018, the Respondent, for arbitrary reasons, has unreasonably delayed the processing of class action grievance settlements regarding the crossing of crafts at the Employer's Fort Street facility.

CONCLUSION OF LAW

By the conduct described above, the Respondent has breached the duty of fair representation owed to the Charging Party and has been restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent breached the duty of fair representation to the Charging Party and violated Section 8(b)(1)(A) by unreasonably delaying, for arbitrary reasons, the processing

of class action grievance settlements regarding the crossing of crafts at the Employer's Fort Street facility, we shall order it to process those class action grievance settlements in a timely manner. In addition, we shall order the Respondent to post a notice to members and to provide signed copies of the notice to the Employer for posting, if it is willing to do so.

ORDER

The National Labor Relations Board orders that the Respondent, Local 307, National Postal Mailhandlers Union (NPMHU), AFL–CIO, a Division of LIUNA, Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Breaching the duty of fair representation by arbitrarily and unreasonably delaying the processing of class action grievance settlements regarding the crossing of crafts at the Employer's Fort Street facility.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Timely process the class action grievance settlements regarding the crossing of crafts at the Employer's Fort Street facility.

(b) Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days after service by the Region, sign and return to the Regional Director for Region 7, sufficient copies of the notice for posting by the Employer, United States Postal Service, if willing, at all places where notices to employees are customarily posted in its Fort Street facility.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 4, 2019

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT breach our duty of fair representation by unreasonably delaying, for arbitrary reasons, the processing of class action grievance settlements regarding the crossing of crafts at the United States Postal Service's Fort Street facility.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL timely process the class action grievance settlements regarding the crossing of crafts at the United States Postal Service's Fort Street facility.

LOCAL 307, NATIONAL POSTAL MAILHANDLERS
UNION (NPMHU) AFL-CIO, A DIVISION OF
LIUNA

The Board's decision can be found at www.nlrb.gov/case/07-CB-218938 or by using the QR

code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

